LIBRARY
SUPREME COURT, U. S.

OCT 14 1961

JAMES R. BROWNING, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 495

TRUCK DRIVERS LOCAL UNION No. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION No. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioners,

v.

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JACOB KOSSMAN
1325 Spruce Street
Philadelphia 7, Pennsylvania
Attorney for Petitioners

JAMES E. HAGGERTY
903 Dime Building
Detroit 26, Michigan
Of Counsel

October, 1961

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Constitutional Provision and Statutes Involved	2
Questions Presented	7
Statement	8
Reasons for Granting the Writ	13
1. The scope of the subpoena power conferred upon the Secretary of Labor by Section 601 of the Labor-Management Reporting and Disclosure Act is a novel and serious question requiring the construction of this important new legislation by this Court	13
2. The attempt by the Secretary of Labor to compel production of records which antedate the effective date of the Labor Management Reporting and Disclosure Act raises an important question concerning the scope of the Act	26
3. The question of Congressional power under the Commerce Clause to regulate internal affairs of labor unions is a novel and serious question of constitutional law which has not been and which ought to be resolved by this Court	28
Conclusion	35

Appendix A: Opinion of the United States Court of Appeals for the Sixth Circuit, decided August 16, 1961	1a
Appendix B: Judgment of the United States Court of Appeals for the Sixth Circuit, dated August 16, 1961	17a
Appendix C: Order of the United States Court of Appeals for the Sixth Circuit denying petition for rehearing	18a

Page

Appendix D: Subpoena Duces Tecum to Local 299, dated September 19, 1960 ..... 19a

Appendix E: Subpoena Duces Tecum to Local 614, dated September 19, 1960 ..... 21a

Appendix F: Opinion of the United States Court of Appeals for the District of Columbia Circuit, decided June 30, 1961, *Montship Lines, Limited, et al.* v. *Federal Maritime Board, et al.* 23a

Appendix G: Opinion of the United States District Court for the Eastern District of Michigan, Southern Division 42a

Appendix H: Memorandum of the United States Court of Appeals for the District of Columbia Circuit, dated October 5, 1961 ..... 53a

INDEX OF CITATIONS

CASES:

American Communications Ass'n v. Douds, 339 U.S. 382, 390 (1950) 31

Communist Party of the United States of America v. Subversive Activities Control Board, 367 U.S. 1 (1961) 35

Kerr Steamship v. United States, USCA-2d, decided November 17, 1960 23

Montship Lines, Ltd. v. Federal Maritime Board, USCA-DC Nos. 15783-809, etc., decided June 30, 1961 ..... 23, 23a

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 37 (1937) 29

Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 ..... 12, 19, 20, 21, 22, 24

Railway Employees Dep't AFL v. Hanson, 351 U.S. 225, 233 (1956) 30

Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 457 (1957) 30

United States v. Darby, 312 U.S. 100 (1941) 30

United States v. Morton Salt Co., 338 U.S. 632 (1950) 12, 22, 24

Virginia Ry. Co. v. System Federation No. 40, 300 U.S. 515, 553 (1937) 30

Page

CONSTITUTION OF THE UNITED STATES, Article I, Section 8 ..... 2, 28

STATUTES:

Federal Trade Commission Act, 15 U.S.C. §§ 49 and 50:

Section 9 3
Section 10 5

Labor-Management Relations Act of 1947, Section 9(h) 31

Labor-Management Reporting and Disclosure Act of 1959:

Section 2(a), 29 U.S.C. § 401(a) 33, 34
Section 201, 29 U.S.C. § 431 ..... 18, 27
Section 207(b), 29 U.S.C. § 437(b) 27
Section 209, 29 U.S.C. § 439 19
Section 301, 29 U.S.C. § 461 19
Section 401, 29 U.S.C. § 481 18
Section 501, 29 U.S.C. § 501 18
Section 601, 29 U.S.C. § 521 ..... 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22, 24, 25, 26

MISCELLANEOUS:

Directory of National and International Labor Unions in the United States, 1959, Bulletin No. 1267, United States Department of Labor, December 1959 14

72 Harvard Law Review 609, 610 (1959), Cox, *The Rule of Law in Preserving Union Democracy* 32

H. R. 8400, 86th Cong., 1st Sess. 16
S. 505, 86th Cong., 1st Sess. 16
S. Rep. No. 187, 86th Cong., 1st Sess., U. S. Code Congressional & Administrative News, 86th Cong., 1st Sess., 2395-96 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No.

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioners,*

v.

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Your petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled cause on August 16, 1961.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Michigan (R. 55a-63a, Appendix G, *infra*, pp. 42a-52a)* is not reported. The opinion of the Court of Appeals for the Sixth Circuit (Appendix A, *infra*, pp. 1a-16a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals (Appendix B, *infra*, p. 17a) was entered on August 16, 1961. A timely petition for rehearing was denied on September 12, 1961 (Appendix C, *infra*, p. 18a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(a).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

1. The United States Constitution, Article I, Section 8, provides in pertinent part:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

2. Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 521, provides:

> (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the

* References prefixed "R" are to the printed Transcript of Record filed in the court below and in this Court.

facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

3. Section 9 of the Federal Trade Commission Act, 15 U.S.C. § 49, provides:

For the purposes of sections 41-46 and 47-58 of this title the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may in-

voke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of sections 41-46 and 47-58 of this title or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under sections 41-46 and 47-58 of this title at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

4. Section 10 of the Federal Trade Commission Act, 15 U.S.C. § 50, provides:

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under sections 41-

46 and 47-58 of this title, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to said sections, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his contro, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by sections 41-46 and 47-58 of this title to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses

of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

QUESTIONS PRESENTED

1. Whether, under Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, construed in light of the Fourth Amendment to the Federal Constitution, the Secretary of Labor must show that he has a reasonable belief of the necessity for an investigation into the internal affairs of a union as a prerequisite to judicial enforcement of an administrative subpoena duces tecum which is so broad as to constitute a complete seizure of the books and records of the union.

2. Whether Section 601 of the Labor-Management Reporting and Disclosure Act of 1959 authorizes the Secretary of Labor to compel production of records which antedate the effective date of the Act.

3. Whether the Commerce Clause of the Constitution of the United States, Article I, Section 8, confers upon the Congress power to regulate and interfere with the exclusively internal affairs of labor organizations, the relationships of such associations with their members and with other labor organizations, matters which have no substantial relationship to labor-management relations or the collective bargaining activities of such organizations.

STATEMENT

This case involves important questions concerning the power of the Secretary of Labor to secure judicial enforcement of an administrative subpoena duces tecum issued on his authority in connection with an investigation he was making under the authority of the Labor-Management Reporting and Disclosure Act of 1959.

It will be recalled that this statute was the product of two quite different and unrelated campaigns in the field of federal control of collective bargaining and labor unions. The part here relevant concerns the effort to regulate internal union affairs through federal legislation. The second part of the statute was an amendment or repealer of certain provisions in the Labor Management Relations Act of 1947, the so-called Taft-Hartley Act.

The questions raised by the present proceeding all derive from the extraordinary power conferred by the statute upon the Secretary of Labor by Section 601, which provides:

> (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto.

The exception of title I removes from the Secretary's jurisdiction the "Bill of Rights of Members of Labor Organizations," which is contained in that part of the

Act. The other exception is, of course, the Taft-Hartley amendments. All the remaining provisions of the act, Titles II through VI, are brought within the power of the Secretary of Labor under Section 601.

Acting pursuant to this section, John L. Holcombe, Commissioner of the Bureau of Labor-Management Reports, who had been authorized to exercise the powers of the Secretary of Labor, signed and issued on September 19, 1960, a subpoena duces tecum addressed to the officer in charge of the records of petitioner Local 299. (Appendix D, *infra*, pp. 19a-20a). A like subpoena was issued the same day addressed to the officer in charge of the records of petitioner Local 614. (Appendix E, *infra*, pp. 21a-22a). The first paragraph of the subpoenas, tracing the language of Section 601, recites that they are issued in connection with an investigation "involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 et seq., except Title I or amendments made by the Act to other Statutes." The second paragraph requires the production of virtually all the records of the two organizations, in the following language:

> "All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secertary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all

items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements."

On October 26, 1960, the officers of the petitioners in charge of records appeared before the respective hearing officers named in the subpoenas. Both union officers declined to comply with the terms and demands of the subpoenas for the production of records in view of certain legal questions concerning the power of the Secretary to compel such disclosure. Specific reference was made to the paramount question of the constitutionality of the Act.

On October 27, 1960, representatives of the Secretary of Labor filed, in the District Court for the Eastern District of Michigan, a petition for an order compelling the unions to produce the documentary evidence called for by the subpoenas. This procedure was taken under Section 601(b) of the LMRDA, which incorporates the provisions of Sections 9 and 10 of the Federal Trade Commission Act of 1914 as amended. Section 9 of that Act confers jurisdiction upon the United

States District Courts, in case of contumacy or refusal to obey an administrative subpoena, to issue an order requiring compliance with the subpoena.

The District Judge (Kaess) denied the petition of the Secretary of Labor for an order of compliance. The Court found that "the Secretary of Labor has never indicated that there was any complaint or charge either filed with or pending before him involving the respondents. Nor does the Secretary of Labor or his duly authorized and delegated subordinates, indicate or intimate that there has been, could be, or do they have any reason to believe any violation of law has been committed or contemplated by the respondent unions." (R. 55a). Turning to the language of Section 601, providing that the Secretary shall have power to subpoena "when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act," the District Judge held that, before issuance of any judicial order of compliance with a subpoena, there must be some showing made on the issue of necessity. He concluded that the statute did not authorize the Secretary, acting so far as the Court knew purely by whim or caprice, to have enforcement of these subpoenas which are "so broad that they constitute a complete seizure unrelated to any recorded purposeful investigation." (R. 62a).

While the District Court's holding squarely rested upon an interpretation of the statute, he was not unmindful of the presence of serious constitutional questions underlying the interpretation of the Act and adverted to them in his opinion. Because his conclusion on the meaning of the statute was dispositive of the case, it was unnecessary for him to decide any of the constitutional questions posed by the unions.

Nor was it necessary for the District Court to deal with the additional issue of the power of the Secretary of Labor to subpoena records antedating the effective date of the Labor-Management Reporting and Disclosure Act. The statute was approved on September 14, 1959. Both subpoenas in this case demanded the production of documents all the way back to January 1, 1959. The unions contended that this retroactive demand exceeded the power conferred by the Act.

The Court of Appeals for the Sixth Circuit reversed. The appellate court held that the Secretary's subpoena should be enforced without any showing whatsoever as to necessity: "The statute was sufficient authority for him to proceed." (Appendix A, *infra*, p. 10a). By this, the court meant that there could and should be no judicial examination of the Secretary's reason or purpose or motive in singling out any particular union as the target of his subpoena power. The Sixth Circuit believed this Court's decision in *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, and *United States* v. *Morton*, 338 U.S. 632, were dispositive of the issue.

The Sixth Circuit did not blink the breadth of the subpoenas in this case, saying only that all the records which were sought might be relevant to some possible violation of the LMRDA. Since the scope of the investigation was presumably as broad as the full scope of the Act, no reference having been made to any specific rule or provision, there could be no denying the power to compel the indiscriminate production of all the records which were sought by these subpoenas.

The Court of Appeals dismissed petitioners' argument that the Labor-Management Reporting and Dis-

closure Act is unconstitutional, as outside the scope of permissible federal regulation under the Commerce Clause, to the extent that it interfered with the internal affairs of voluntary unincorporated associations. Significantly, the Court of Appeals did not make an independent decision on the issue of the scope of Congressional power in this matter, but contented itself with relying completely and exclusively upon certain Congressional findings, which were adopted as part of the LMRDA, that the internal affairs of labor organizations were a responsibility of the Federal Government.

The Court of Appeals simply ignored petitioners' argument that these subpoenas were defective because they demanded production of records most of which antedate the law on which the subpoenas purport to rest.

REASONS FOR GRANTING THE WRIT

1. The scope of the subpoena power conferred upon the Secretary of Labor by Section 601 of the Labor-Management Reporting and Disclosure Act is a novel and serious question requiring the construction of this important new legislation by this Court.

A. The primary question posed by this case requires interpretation of the recently enacted Labor-Management Reporting and Disclosure Act of 1959, referred to herein as the LMRDA. The Secretary of Labor contends that Congress has given him the unlimited power to subpoena the books, records and files of any labor organization in the country, without any reason or showing of necessity, for the purpose of determining whether or not that organization has violated or is about to violate the LMRDA. Your petitioners contend that Congress has not granted such arbitrary

power to one government official, but rather has limited the subpoena power to those situations in which there appears some reasonable necessity for the seizure of a union's books, files and records.

Perhaps the best way to reveal the full dimensions of this dispute is to recite from an official publication of the Department of Labor showing that, as of 1959, there were 184 national and international unions and 78,110 locals in the United States. Directory of National and International Labor Unions in the United States, 1959, Bulletin No. 1267, United States Department of Labor, December 1959. The Secretary takes the position that he can select at will any one of these more than 78,000 unions and subject it to the harassment and annoyance of an official subpoena to turn over its books, records and files. The Secretary argues that, under the statute, he can base his choice of which labor group he will seize as his target on any motive, even mere whim or caprice, that he has complete, arbitrary and unreviewable power to decide where and when to exercise his subpoena power.

No one familiar with the history of the rise and evolution of organized labor can be unappreciative of the danger to the labor movement in this claim of arbitrary power. The use of the powers of government to harass and destroy the effectiveness of unions is a well-known and not completely closed chapter in labor history. Section 601 of the LMRDA is only a new addition to the possible legal weapons which could be turned against a particular union. Not only is there the disruptive effect of the seizure of the union's files, but the statute specifically permits the Secretary to "report to interested persons" on any matter which he deems appropriate after such an investigation. No

confidence or private matters are given protection. Even the membership lists of unions, traditionally entitled to be held in strictest privacy, are subject to compulsory disclosure to the Secretary, and through him, to "interested persons."

In the minds of some, the dangers of abuse of the powers of Section 601 in a calculated way inimical to labor may seem a remote possibility in light of the present incumbency of the office of Secretary of Labor. It is not necessary or even appropriate to consider the matter with any particular Secretary of Labor in mind. Presidential Administrations are changed at least once every four years and Cabinet posts more frequently. It is possible, therefore, to conceive of a President coming into office with a firm view that all labor groups or some particularly aggressive labor groups are not functioning in the public interest. Such an Administration could even be publicly committed to the destruction and downfall of certain labor leaders. The Secretary of Labor, in such a situation, would have an extraordinary weapon in Section 601 to accomplish this purpose, if the interpretation urged by the Government in this case is adopted. It is utterly unrealistic to assume that Section 601 will inevitably be administered by persons impartially favorable to all labor groups.

The conclusion that Congress has given such power to the Secretary of Labor is, however, impossible simply on the face of the statute. Section 601 states that the Secretary "shall have power *when he believes it necessary* in order to determine whether any person has violated or is about to violate any provision of this Act . . ." (Emphasis added). The Government would ignore the language requiring a finding of necessity.

The Government would read Section 601 as if there was no condition whatsoever on the Secretary's power. But Congress did insert a condition. There was full realization of the dangers inherent in the unlimited subpoena power which the Secretary now claims.

The legislative history reveals that the original bills in the Senate and the House of Representatives conditioned the subpoena power on the existence of probable cause to believe that any person or labor organization had violated the Act. S. 505, 86th Cong., 1st Sess.; H.R. 8400, 86th Cong., 1st Sess. The probable cause requirement was eliminated prior to passage of the Act and the present language of Section 601 was substituted. The argument of the Government and the reasoning of the Sixth Circuit blindly follow the logical fallacy that, because Congress removed the more onerous condition of probable cause, it must therefore have eliminated all possible restraints upon the powers of the Secretary. Congress clearly retained a provision which establishes as a prerequisite the existence of a reasonable belief of the necessity for a particular investigation. To completely ignore that part of Section 601 is to uphold a power immeasurably greater than that actually conferred by Congress.

The Report of the Senate Committee on Labor and Public Welfare makes it completely clear that the probable cause requirement was taken out of the bill because it was believed too stringent.

> "Probable cause means more than a mere suspicion that the act has been violated. To have probable cause, a person must have such evidence as would lead the ordinary prudent man to believe that the act has been violated. Consequently, every

> time he commenced an investigation the Secretary could be dragged into court until the question of probable cause had been decided. . . . Our amendment rewrites this section to give the Secretary investigatory power when he believes it necessary in order to determine whether a violation has occurred or is about to occur." S. Rep. No. 187, 86th Cong., 1st Sess., U.S. Code Congressional & Administrative News, 86th Cong., 1st Sess. 2395-96.

Clearly the probable cause test was thought to be too strong and likely to lead to protracted litigation. The concept of probable cause has been encrusted with many sub-meanings through a lengthy legal evolution. But there is nothing in this legislative history which indicates that Congress abandoned any restraint on the Secretary's subpoena power.

The Government is fond of the phrase "dragged into court" which appears in the Senate Report quoted above. They argue from this that there was a clear Congressional intention that there should be no judicial examination of the actions of the Secretary, since Congress did not want him dragged into Court. This argument, wrenching language out of context, ignores the thrust of the quoted portion of the report, which goes to the quality of the probable cause test and not to the elimination of any judicial power to scrutinize the actions of the Secretary when the Secretary is not dragged into court but comes to court to seek the aid of the judicial power in enforcing one of his subpoenas.

Notwithstanding the argument of the Government and the decision of the Sixth Circuit based upon that argument, it is possible to establish a standard which the Secretary must meet that is qualitatively and quan-

titatively different from the probable cause requirement in criminal law. At the very least, the courts are entitled to know on what basis the Secretary selected any one particular labor union from the more than 78,000 groups in the country as the target of the subpoena he seeks to have enforced. But these matters go to the merits of the proper statutory interpretation and ought not to be explored in this Petition.

B. Aggravating the Secretary's assertion that his power to issue subpoenas is not limited under the statute is the scope of the subpoenas issued in this case. The District Court aptly described the effect as a "complete seizure." The breadth of the subpoenas is derived from the utter failure of the Secretary to specify what, if any, provision of the LMRDA was the subject of the investigation. Rather the Secretary claims the power to inquire indiscriminately into any and all of the provisions of the LMRDA included under the Section 601 authorization. The result is the kind of subpoenas now before the Court in which there is sought a complete seizure of the books, files and records of the unions.

It is not necessary to recite here in any detail the broad scope of the LMRDA. The Act establishes fixed rules for the terms of office of union officers, lays down explicit regulations for the conduct of campaigns and elections, and specifies the right to vote. Section 401, 29 U.S.C. § 481. The Act sets up certain extremely general standards of fiduciary responsibility of the officers and representatives of labor organizations. Section 501, 29 U.S.C. § 501. A whole battery of reporting requirements concerning the organizational structure and the financial transactions of labor organizations are provided in Section 201, 29 U.S.C.

§ 431. These are reinforced by stiff criminal provisions for making false statements in Section 209, 29 U.S.C. § 439. Section 301, 29 U.S.C. § 461, establishes complex procedures where a trusteeship relationship exists between two labor groups. Virtually every aspect of the internal affairs of a labor organization is relevant to some provision of the LMRDA, as to which the Secretary asserts an unqualified power to subpoena.

If, on the other hand, as contended by the petitioners in this case, the Secretary is empowered to effect compulsory disclosure only when he has some reasonable basis as to the necessity to do so, in most situations there will be a specific portion of the LMRDA which is the subject. In that event, the breadth of the subpoena can appropriately be limited to the materials relevant to that particular inquiry. There would be no occasion for the complete seizure sought to be effected by the Secretary under the subpoenas in the present case.

C. The Sixth Circuit rested its decision largely on the belief that this Court's decision in *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946), was dispositive of the present controversy. This conclusion is manifestly a misreading of the decision in *Oklahoma Press*. That case, which arose under the Fair Labor Standards Act, could not and did not speak to the primary question in this case, which involves the construction of a statute, the LMRDA, that was not passed until 13 years later.

Petitioners in *Oklahoma Press* argued, *inter alia*, that the Fourth Amendment to the United States Constitution would be violated if the subpoenas in that case were enforced. From their constitutional argument,

the petitioners there attempted to convince the Court that the statute in question did not authorize the issuance of the subpoenas. The Court gave short shrift to the theory concerning the intent of Congress since it was found that the Fair Labor Standards Act on its face expressly granted the powers which the petitioners claimed had been withheld: "the statute's language leaves no room to doubt that Congress intended to authorize just what the Administrator did and sought to have the courts do." *Id.* at 197-98. The case was said to rest on the "most explicit language" of the intention of Congress. The Court then went on to reject the claimed violation of the Fourth Amendment. This decision obviously cannot control the interpretation of a *different* statute with *different* provisions and a *different* purpose.

It is also important to note that this Court's disposition of the constitutional issue in *Oklahoma Press* was largely attributable to the fact that the petitioners were corporations. Indeed, the discussion virtually begins and ends with emphasis of this fact:

> "Historically private corporations have been subject to broad visitorial power, both in England and in this country. And it long has been established that Congress may exercise wide investigative power over them, analogous to the visitorial power of the incorporating state, when their activities take place within or affect interstate commerce. Correspondingly it has been settled that corporations are not entitled to all of the constitutional protections which private individuals have in these and related matters." *Id.* at 204-05.

Later applying the principles discussed in the opinion to the facts of the cases, the analysis re-emphasizes the

fact that petitioners were incorporated entities. *Id.* at 209-10.

Needless to say, the present case does not involve corporate petitioners. The labor unions involved are simply voluntary unincorporated associations of individuals. Therefore, even on the discussion of the application of the Fourth Amendment, the *Oklahoma Press* decision could not be dispositive of any question in this case.

It is relevant to stress here that the question of statutory interpretation presented by this case cannot be viewed wholly apart from the limitations of the Constitution. That such limitations exist has been recognized by this Court many times. In *Oklahoma Press*, the Court stated that the core of the constitutional problem has been the balancing of the public interest against private security. *Id.* at 203. This might also be summed up as a requirement of reasonableness: "Necessarily, as has been said, this cannot be reduced to formula; for relevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry." *Id.* at 209.

There is a constitutional dimension to the present case. If certiorari is granted, petitioners will argue that the Court should be aware of the basic constitutional principles governing the eternal tension between public interest and private security. This argument would be directed toward a conclusion that Congress lacked any power under the Constitution to grant the visitorial rights claimed by the Secretary of Labor. Rather the argument would shape and color and guide the interpretation and construction of the permissible use of compulsory process under Section 601.

A word should also be said concerning the reliance of the court below on the decision of this Court in *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950). The Sixth Circuit did not characterize this decision as dispositive in the instant proceeding, but did place some considerable emphasis upon it. The issues in *Morton Salt* concerned the power of the Federal Trade Commission under the Federal Trade Commission Act. There was outstanding against Morton Salt a cease and desist order which the Court of Appeals for the Seventh Circuit had affirmed. The principal issue raised concerned the power of the FTC to issue a subpoena to determine whether the decree was being obeyed. The company contended that the Commission had been ousted of jurisdiction when the Seventh Circuit entered its judgment. This Court held that the Commission retained power to investigate. The Court also rejected an elaborate argument based on the structure of the Federal Trade Commission Act. Finally, the Court concluded that there was no violation of the Fourth Amendment, reiterating that "corporations can claim no equality with individuals in the enjoyment of a right to privacy." *Id.* at 652. As in Oklahoma *Press,* the fact that the inquiry was directed at a corporation was deemed extremely important in the analysis of the constitutional issue.

Obviously neither *Morton Salt* nor *Oklahoma Press* even begins to deal with the novel and important question of the meaning of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959.

D. A recent decision of the Court of Appeals for the District of Columbia provides current, forceful witness to the vitality of the Fourth Amendment limitations on the investigative power of federal agencies.

In *Montship Lines, Ltd.* v. *Federal Maritime Board,* decided June 30, 1961, the Court of Appeals held that an order of the Maritime Board violated the Fourth Amendment because it was too sweeping and general in scope. (This opinion is reproduced for the convenience of the Court in Appendix F, pp. 23a-41a). The court held that the order in question, issued under Section 21 of the Shipping Act, was within the scope of statutory authority of the Maritime Board. But the order was deemed fatally defective for failure to be more explicit as to the purpose of the investigation. Lacking a sufficient statement of purpose, the court concluded that it had no standard against which to determine the relevancy of the information demanded. Therefore, the action of the Board was unreasonable and its order was vacated. *Contra,* see recent Memorandum reproduced for the convenience of the Court in Appendix H, p. 53a.

The present case is closely parallel to the *Montship Lines* case. Here the Secretary purports to be acting under all of his statutory powers at once. Nothing more explicit is known about his purpose than that. As in *Montship Lines,* there is no discernible standard against which to measure the relevancy of any of the materials demanded. In this situation, the Court of Appeals for the District of Columbia held that there was a violation of the Fourth Amendment.

The same order of the Maritime Board tested in *Montship Lines* was upheld by the Second Circuit in another proceeding brought to challenge the order. *Kerr Steamship* v. *United States,* decided November 17, 1960. (See Appendix F, *infra,* pp. 23a-41a). That decision is presently pending on petition for certiorari No. 29 this Term. In view of the divergent results between *Kerr Steamship* and *Montship Lines,* it seems likely that certiorari will be granted. It should

be noted that the Second Circuit did not discuss the Fourth Amendment question and its decision is not in conflict with the District of Columbia Circuit on that issue. In disposing of these cases, since the constitutional issue is clearly raised, this Court may undertake to review the principles of the Fourth Amendment, discussed in *Oklahoma Press Publishing Co.* v. *Walling, supra,* and *United States* v. *Morton Salt, supra.* As has already been indicated, the limitations of the Fourth Amendment are vitally important to the interpretation to be given to Section 601 of the LMRDA. The interaction of these recent cases suggests that all of them should now be brought before this Court for decision.

E. The importance of the question presented by this broadside effort to compel disclosure under Section 601 of the LMRDA is apparent on the face of the discussion. In addition, however, we may stress several facts which underscore the vital necessity for review by this Court.

As has already been mentioned, the issues posed here affect more than 78,000 labor organizations in the United States. Any one of them could be made the subject of one of the Secretary's swooping investigations. There are more than 18 million members of these labor organizations with substantial rights at stake in the present litigation.

In the event that this Court should fail to consider the question in the present proceeding, it is unlikely that the matter would ever be litigated again. Section 601 of the LMRDA incorporates by reference the penalty provisions of the Federal Trade Commission Act. Section 10 of the latter act makes it a crime, punish-

able by a fine of not less than $1,000 nor more than $5,000, or by imprisonment of not more than one year, or both, for any person who neglects or refuses to produce evidence in obedience to a subpoena. Petitioners seriously weighed the risks of these penalty provisions before deciding to decline to obey the subpoenas in this case. It was decided that the chance of heavy penalty was not likely in the first case to test the Secretary's power. In the future, however, there is virtually no likelihood that any union officer can take the chance of the severe criminal penalties in order to challenge the authority of the Secretary. Therefore, it is urgent that this Court consider the statutory question in the present proceeding.

If any further evidence is needed of the importance of the issues involved, it is provided by the first sentence of the opinion of the court below:

> "This case involves important questions concerning the right of the Secretary of Labor to secure judicial enforcement of subpoenas duces tecum issued by him and served on union officers in connection with an investigation he was attempting to make under the authority of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 521." (Appendix A, *infra*, p. 1a).

The Secretary of Labor and the Department of Justice also concurred in the view that the questions in this case were matters of special importance. In the Court of Appeals, the Government moved for advancement of the hearing of argument. The Government represented to the Court of Appeals "that these are questions, the early resolution of which by this Court is of paramount importance to the Secretary of Labor with respect to the execution of the investigatory du-

ties placed on him by Congress in Section 601 of the LMRDA."

The conclusion is plain. The question presented here is serious and substantial, amply justifying the invocation of this Court's power to review on writ of certiorari.

2. The attempt by the Secretary of Labor to compel production of records which antedate the effective date of the Labor-Management Reporting and Disclosure Act raises an important question concerning the scope of the Act.

Both subpoenas issued under the authority of the Secretary of Labor in this case ordered the unions to produce "all records for the period from January 1, 1959 to the present date." The Labor-Management Reporting and Disclosure Act did not become effective under September 14, 1959. Thus, the action of the Secretary of Labor in this proceeding constitutes an attempt to seize records for more than a nine month period prior to enactment of the LMRDA. In effect, the Secretary has attempted to make the statute apply retroactively to the beginning of the calendar year in 1959.

Petitioners have protested throughout these proceedings that the subpoenas were illegally broad because of their purported application to events which preceded the statute. In the District Court, because of the District Judge's conclusion that the subpoenas were fatally defective, he expressly stated that he need not reach this question. While the Court of Appeals for the Sixth Circuit upheld the power of the Secretary, that court simply ignored the contention that the subpoenas were defective because of the demand for records of the period prior to September 14, 1960. This default

was expressly raised again in the Court of Appeals by a petition for rehearing, but to no avail.

With such a sweeping statute imposing numerous rules dealing with the internal affairs of labor unions, rules backed up in many instances with stern criminal penalties, it is obviously highly important to fix the effective date of the law. The normal rule that a new law, adopted by a legislature, becomes effective only prospectively from the date of enactment is placed in doubt by the action of the Secretary in this case. The only explanation of the subpoenas is that the Government plans to apply to LMRDA as of January 1, 1959.

The attempt to subpoena records for the nine months prior to the effective date of the statute is in plain violation of the terms of the Act. The subpoenas demand all records whereby the organizational report and the financial report of each of the labor unions can be verified for accuracy and completeness. These reports are governed by Section 201 of the Act, 29 U.S.C. § 431. Section 207(b), 29 U.S.C. § 437(b), makes it quite plain that Congress intended no retroactive application of the statute:

> "Each person required to file a report under section 201(b), 202, 203(a), or the second sentence of 203(b) shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201(b), 202, 203(a), or the second sentence of 203(b), as the case may be, for only a portion of such a fiscal year (*because the date of enactment of this Act occurs during such person's fiscal year* or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report." (Emphasis added).

This reveals with absolute clarity that Congress intended to cover only that portion of 1959 which came after the effective date of the statute.

The subpoenas issued by the representative of the Secretary fly in the face of this unambiguous statement by Congress on the non-retroactive application of the LMRDA. This presents an important and serious question concerning the Act which ought to be resolved by this Court.

3. The question of Congressional power under the Commerce Clause to regulate the internal affairs of labor unions is a novel and serious question of constitutional law which has not been and which ought to be resolved by this Court.

The great cases in this Court concerning the power of Congress to enact the "New Deal" legislation have receded into the past, but it remains true today as always that the power of Congress to regulate and control commerce is limited by the Constitution of the United States. In undertaking to legislate union democracy, Congress has made an unprecedented attempt to exercise its power under Article I, Section 8, "To regulate Commerce . . . among the several States." Petitioners contend that the Labor-Management Reporting and Disclosure Act is, so far as pertinent here, patently unconstitutional. But certainly it must be agreed that the question of Congress' power to regulate by *federal* law the internal affairs of more than 78,000 voluntary unincorporated associations of workingmen across the country presents a novel and serious question of constitutional law which has not been and which ought to be resolved by this Court.

It has become so common-place to consider labor regulation as within the permissible legislative reach

of Congress that it is easy to fail to distinguish what aspects of labor law are properly within the federal sphere and the jurisprudential theory which justifies the exercise of federal power.

First, it is clear beyond any question that labor organizations are not a part of "Commerce . . . among the several States." Even labor-management relations have never been found to be a part of interstate commerce. The sole and exclusive justification for the exercise of federal power in the regulation of labor-management affairs has been the possibility that industrial strife might interfere with and obstruct the flow of interstate commerce. Only because it might *affect* commerce was the subject of collective bargaining held within the power of Congress to control.

This is abundantly clear in the great case upholding the National Labor Relations Act of 1935:

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control." *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937).

This Court, in *Jones & Laughlin*, stressed the possible stoppage of production by industrial strife as having a serious effect on commerce, an "immediate and catastrophic" effect. *Id.* at 41. The Court declared that experience had abundantly demonstrated that recognition of the right of employees to self-organization and to have representatives of their own choosing for purposes of collective bargaining is often an essential of industrial peace.

This Court had earlier employed precisely the same reasoning to uphold the Railway Labor Act, which regulated labor-management relations in the railroad industry. Labor affairs were not themselves found a part of interstate commerce. Rather, it was the potential effect of industrial disputes on commerce which was determinative.

> "The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders." *Virginia Ry. Co.* v. *System Federation No.* 40, 300 U.S. 515, 553 (1937).

See also *United States* v. *Darby,* 312 U.S. 100 (1941), upholding the Fair Labor Standards Act.

Within the past few years, this Court has had occasion to reiterate the constitutional basis for Congressional regulation of labor-management relations. Upholding the provision of the Railway Labor Act permitting the union shop, this Court declared:

> "Industrial peace along the arteries of commerce is a legitimate objective: and Congress has great latitude in choosing the methods by which it is to be obtained." *Railway Employees Dep't AFL* v. *Hanson,* 351 U.S. 225, 233 (1956).

The opinion of the Court sustaining Section 301(a) of the Labor-Management Relations Act of 1947 stated that "the power of Congress to regulate these labor-management controversies under the Commerce Clause is plain." *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 457 (1957).

Even the decisions of this Court which held constitutional the non-communist affidavit provision of Section

9 (h) of the Labor-Management Relations Act of 1947 rested squarely on the power of Congress to promote industrial peace and thereby protect the flow of commerce.

> "There can be no doubt that Congress may, under its constitutional power to regulate commerce among the several States, attempt to prevent political strikes and other kinds of direct action designed to burden and interrupt the free flow of commerce." *American Communication Ass'n* v. *Douds*, 339 U.S. 382, 390 (1950).

In short, every previous constitutional test of an act of Congress in matters of interest to labor organizations has been sustained solely on the ground that the regulated affairs might burden or obstruct the flow of interstate commerce. Collective bargaining and labor-management relations are properly within the reach of Congress only because of the possible impact of industrial disputes on interstate commerce. It has never been held that labor organizations are in and of themselves a part of interstate commerce.

Neverthless, Congress in 1959 enacted a federal law, grounded solely on the commerce power, which regulates and controls the internal affairs of labor unions. The purpose of the statute was not to prevent industrial strife which might burden and obstruct interstate commerce. The purpose was simply to impose, under the aegis of federal law, a guaranteed form of union democracy on all 78,000 labor organizations. Professor Archibald Cox, whose greatly influential role in shaping the Labor-Management Reporting and Disclosure Act need not be recounted here, summed up the matter well:

> "An individual worker gains no human rights by substituting an autocratic union officialdom for

> the tyranny of the boss. Only a democratic union, sensitive to the rights of minorities, can help men achieve the ideals of individual responsibility, equality of opportunity, and self-determination." Cox, *The Rule of Law in Preserving Union Democracy*, 72 HARV. L. REV. 609, 610 (1959).

Let it be conceded that the ideals of individual responsibility, equality of opportunity and self-determination are noble ones. Let it even be assumed that they are the proper subject of legislation. But that does not make them a permissible subject for *federal* legislation. In a federal government, with limited powers, the Constitution authorizes Congress to legislate only, in this sphere, with respect to interstate commerce. Union democracy, sensitive to the rights of minorities, has nothing to do with interstate commerce. However praiseworthy one might, or might not, consider the motives of Congress, it remains an unalterable fact that the internal affairs of labor unions are not interstate commerce and have no discernible effect upon interstate commerce.

One might urge that Congress could, with equal or better justification, enact laws regulating the domestic lives of workingmen on the theory that a laborer whose homelife is not happy will certainly be less efficient and productive at work. The sharp effects of a flaw in the serenity of a marriage have been amply studied; no doubt the promotion of this form of domestic tranquility could be a great benefit to commerce. So, too, such other annoyances as a man's democratic rights in his church, his lodge or club could be brought before Congress to regulate in the interest of protecting interstate commerce. These suggestions, it is hoped, will immediately appear as clearly beyond the commerce power. So, too, are the internal affairs of labor unions.

The issue is clearly and sharply posed by the present case through the assertion by the Secretary of Labor of unlimited power to investigate the domestic affairs of any labor union. The subpoena in this case was aptly described by the District Court as constituting a "complete seizure" of the books and records of petitioners. The alleged purpose of the subpoena is nothing less than a broadside investigation to see whether *any* provision of the Act has been or is about to be violated. The Secretary claims to have nothing specific in mind. He just wants to pry into every facet of the internal affairs of these unions. There is not and cannot be any reasonable relationship between such unbridled snooping and Congress' power to regulate commerce among the several States.

Even Congress, adopting the LMRDA, attempted weakly to tie its comprehensive statute to the flow of commerce:

> "... in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, *particularly as they affect labor-management relations.* Section 2(a), 29 U.S.C. § 401(a). (Emphasis added).

The attempt to relate the internal affairs of unions to labor-management relations, in a manner unspecified and impossible of specification, does not save this from being one of the major Congressional non-sequiturs of all times.

Both the Sixth Circuit and the Government have found considerable refuge in the further declaration of Congress that "the relation between employers and labor organizations and the millions of workers they rep-

resent have a substantial impact on the commerce of the Nation." Section 2(a), 29 U.S.C. § 401(a). It is highly doubtful that this declaration has anything to do with the internal affairs of labor unions. The Government, finding some magical powers in the use of the plural "relations" argues that it does and, apparently, the Sixth Circuit agreed.

The point is, simply, that even if Congress had said it plainly and unambiguously, the mere statement will not make it so. Congress' celebrated investigations did not determine the impact of internal union affairs upon the commerce of the Nation. That was not their purpose and that was not their consequence.

The matter is more accurately stated in the principal finding by Congress:

> "The Congress finds that, *in the public interest*, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid and protection." Section 2(a), 29 U.S.C. §401(a). (Emphasis added).

This finding is the closest to being accurate. Undoubtedly the passage of the LMRDA can be attributed to varying views among its proponents of what was "in the public interest." But the inescapable fact is that Congress has no power whatsoever to legislate "in the public interest." Its prior enactments have not been illustrative of a responsibility of the Federal Government to protect employees' rights, but of a federal power to regulate interstate commerce.

The LMRDA is the result of an erroneous view among Congressmen that they have the general power to legislate in the public interest and the specific responsibility to protect employees' rights. Only if this

were true could the comprehensive scheme of controls imposed on labor organizations and their internal affairs be upheld. Obviously no such power exists.

Enough has been said surely to demonstrate that the scope of Congressional power to enact the Labor-Management Reporting and Disclosure Act of 1959 is an important and substantial question of constitutional law which ought to be resolved by this Court. The Sixth Circuit faced the issue but meekly bowed to Congress' findings. In doing so, the Court of Appeals purported to be following this Court's decision in *Communist Party of the United States of America* v. *Subversive Activities Control Board,* 367 U.S. 1 (1961). But this Court was there dealing with a legislative finding on a pure issue of fact. Here the definition of interstate commerce is at stake. The issue is primarily legal, entirely constitutional. It would be total judicial abnegation to bow unquestioningly to a bare assertion by Congress, even if one were made, that the internal affairs of labor unions are interstate commerce. On a matter of this magnitude, it is manifest that this Court should hear and determine the questions presented.

CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for writ of certiorari should be granted.

JACOB KOSSMAN
1325 Spruce Street
Philadelphia 7, Pennsylvania
Attorney for Petitioners

JAMES E. HAGGERTY
903 Dime Building
Detroit 26, Michigan
Of Counsel

October, 1961